REMARKS/ARGUMENTS

Reconsideration is requested. Claims 1-11 are pending. Responsive to the Office Action of April 17, 2006, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Claims 1, 7 and 10 have been amended to correct typographical errors.

Independent claims 1 and 10 have also been amended to recite that the floating probe floatingly contacts the target site bulge as the "target site bulge is created by the pressure tip." (See, for example, paragraph 0033 and FIGs. 3A and 3B of the original disclosure). Such a floating probe configuration beneficially controls penetration depth even though target site physical properties may vary (see, for example, paragraph 0033 of the original disclosure).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

Objections to the Claims

The subject matter of claims 1, 7 and 10 was objected to due to the presence of typographical informalities. Applicants submit that claims 1, 7 and 10, as amended, no longer contain such informalities are, therefore, in condition for allowance.

Claim Rejections under 35 U.S.C. §102

The subject matter of claims 1, 2, 4, 6-8, 10 and 11 was rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,857,983 to Douglas et al. (hereinafter "Douglas").

Douglas, as understood, describes a fluid sampling device that includes a drive rod (element 22) with a syringe (element 26). See, for example, col. 5, lines 22-26 of Douglas. The fluid sampling device also includes a stimulator sleeve, i.e., element 70 (see, for example, col. 3, lines 64-65 of Douglas).

The stimulator sleeve is configured to vertically reciprocate under the action of a motor (element 88) and, thus, repeatedly depress a ring of skin around an incision (see, for example, col. 6, lines 44-49 and FIGs. 1 and 2 of Douglas). It should be noted that the incision depth is controlled by abutment of the drive rod with a stop ring (element 20, in the embodiment of FIGs.

1 and 2 of Douglas) and/or frictional engagement with a gear (element 94 in the embodiment of FIGs. 8 and 9 of Douglas), and not by interaction with the stimulator sleeve (see, in particular, col. 6, lines 38-41 and col. 7, lines 21-24 of Douglas).

Claims 1 and 10, as amended, each recite a floating probe that is adapted to "floatably contact" a target site bulge as the target site bulge is created by a pressure tip and that is configured to "operatively interact with the lancet carriage to control a penetration depth of the lancet into the target site bulge." Although the Office Action contends that element 70 (i.e., the stimulator sleeve) of Douglas anticipates the floating probe of the original claims, Applicants submit that penetration depth in the fluid sampling device of Douglas is controlled by a stop ring and/or a gear (see the discussion above) and not by the stimulator sleeve. Moreover, the stimulator sleeve described in Douglas does not floatably contact a target site bulge, but rather is engaged with a motor that drives the stimulator sleeve in a reciprocating fashion.

For at least the foregoing reasons, Applicants respectfully submit that independent claims 1 and 10, as amended, are not anticipated or obvious over Douglas. Since claims 2, 4, 6-8 and 11 depend from and further limit their respective independent claims, they are allowable for at least the same reasons.

The subject matter of claims 1, 2, 3, 6, 8, 9, 10, and 11 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 5,857,983 to Roe et al. (hereinafter "Roe").

Roe, as understood, describes a bodily fluid sampling device includes an incision forming member (element 42) and a reference member (element 48) as described at, for example, paragraph 0068 of Roe. In the device of Roe, the reference member is driven toward the skin by the incision forming member and serves to flatten the skin as an incision is formed (see, for example, FIGs. 1 and 2 of Roe and paragraph 0068).

Claims 1 and 10, as amended, each recite a floating probe that is adapted to "floatably contact" a target site bulge as the target site bulge is created by a pressure tip and that is configured to "operatively interact with the lancet carriage to control a penetration depth of the lancet into the target site bulge." Although the Office Action contends that element 82 (i.e., the reference member) of Roe anticipates the floating probe of the original claims, Applicants submit that the reference member does not floatably contact a target site bulge as the bulge is created but rather is driven toward the skin in a manner that flattens the skin (see the discussion above). Such a driven reference member is clearly distinguished over the presently recited floating probe that rests on the target site bulge.

For at least the foregoing reason, Applicants respectfully submit that independent claims 1 and 10, as amended, are not anticipated or obvious over Roe. Since dependent claims 2, 3, 6, 8, 9 and 11 depend from and further limit their respective independent claims, they are allowable for at least the same reasons.

Claim Rejections under 35 U.S.C. §103

The subject matter of dependent claim 3 was rejected under 35 U.S.C. §103(a) as obvious over Douglas in view of U.S. Patent 6,022,366 to Schraga (hereinafter "Schraga"). Schraga was cited for teachings related to the use of rigid materials in lancet devices. Applicants submit that Schrage does not cure the deficiencies of Douglas noted above and that dependent claim 3 is allowable for at least the same reasons as discussed above with respect to the rejection of claim 1.

The subject matter of dependent claim 4 was rejected under 35 U.S.C. §103(a) as obvious over Roe in view of Douglas. The deficiencies of Roe and Douglas were noted above. Applicants respectfully submit that their combination does not overcome those deficiencies and that dependent claim 4 is, therefore, allowable for at least the same reasons as discussed above with respect to claim 1.

The subject matter of dependent claim 5 was rejected under 35 U.S.C. §103(a) as obvious over Douglas in view of U.S. Patent No. 5,997,561 to Böcker et al. (hereinafter "Böcker"). Böcker was cited for teaching related to penetration depths. Applicants submit that Böcker does not cure the deficiencies of Douglas noted above and that dependent claim 5 is allowable for at least the same reasons as discussed above with respect to the rejection of claim 1.

The subject matter of dependent claim 5 was also rejected under 35 U.S.C. §103(a) as obvious over Roe in view Böcker. Böcker was again cited for teaching related to penetration depths. Applicants submit that Böcker does not cure the deficiencies of Roe noted above and that dependent claim 5 is allowable for at least the same reasons as discussed above with respect to the rejection of claim 1.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and applicants earnestly solicit early examination on the merits and issuance of a Notice of Allowance. Should the Examiner believe that any additional information or amendment is necessary to place the application in condition for allowanced, he is urged to contact the undersigned Attorney via telephone at 408 956-4790, or facsimile number 408 956-4404.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket LFS5002USNP/MM) (Johnson & Johnson).

Respectfully submitted,

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